

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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DANIEL THEODORE PETERSON,

Plaintiff-Appellant,

v

MINERS STATE BANK,

Defendant-Appellee,

and

CONCEPTS CONSULTING, INC.,

Defendant.

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UNPUBLISHED

June 3, 2014

No. 315073

Ontonagon Circuit Court

LC No. 2011-000062-CK

Before: BECKERING, P.J., and RONAYNE KRAUSE and BOONSTRA, JJ.

PER CURIAM.

Plaintiff appeals by right from the trial court's denial of his motion for a new trial following a post-verdict evidentiary hearing. The underlying cause of action was breach of contract. A jury found in defendant's favor on the claim. We affirm.

Plaintiff initially brought a breach of contract action against defendant Miners State Bank ("defendant Bank"), alleging it failed to fulfill its promise to lend \$2,100,000. Defendant Bank counterclaimed, arguing Plaintiff failed to repay a draw of \$785,812 on the loan. Funds from defendant Bank and a second bank composed the draw, of which approximately \$129,000 came from defendant Bank. The claims went to trial and seven questions were submitted to the jury on a special verdict form. The jury found a contract existed between plaintiff and defendant, defendant did not breach the contract, defendant lent money to plaintiff, and plaintiff failed to repay that money. The jury awarded defendant \$137,000 in damages.

After conclusion of the trial, the trial court received affidavits and a letter raising concerns about jury deliberations centering on the actions of the jury foreman. Following notice from the court, plaintiff requested a new trial and evidentiary hearing. The court held an evidentiary hearing regarding the jury deliberations.

At the hearing, juror Sandra Augustine identified her handwritten affidavit, which was admitted by the court. She stated she heard jury foreman Rodney Langdon say "he knew [plaintiff's ex-wife] in school and he knew her mother and she was a piece of work." When

asked if “Langdon was acting disgusted with the proceedings,” she answered it was “with us mainly.” She said she wanted to look through the transcripts but Langdon was disgusted “when we wanted to look through.” She affirmed she was confused about the breach of contract question. When asked if she agreed with the verdict, she testified “[n]ot really. I didn’t have enough time to go through the papers to look at the dates.” However, she acknowledged she voted in favor of the verdict. When asked if the verdict was based on the evidence she stated, “I didn’t get to look at all of it.” She testified jurors discussed the verdict in the elevator after the trial, and she learned other jurors had feelings similar to her own. When asked if Langdon’s comments or demeanor influenced her she testified, “[N]ot me. I just thought that, umm, that should have nothing to do with what was going on.” However, she affirmed she felt intimidated by Langdon during deliberations, and she felt pressured to go along with the verdict. She stated the deliberative process was characterized by “confusion and pressure,” but asserted she only presumed to speak for herself. Regarding comments about plaintiff’s ex-wife, she acknowledged the comments did not play a part in her decision. She testified the comments were made before deliberations began.

Langdon testified he knew the plaintiff’s ex-wife because they grew up in the same small town. He denied referring to plaintiff’s ex-wife as a “gold digger,” but admitted he “might have said something” prior to deliberations “to the effect that I find it interesting that she’d be sitting with you in the courtroom, assisting you, if you were gone [sic] through a divorce.” He stated he did not hold any prejudice about plaintiff and denied telling the jurors they could not get transcripts. He testified he understood the verdict form fully. He testified the verdict was based on the evidence presented.

Juror Mary Ann Roose testified foreman Langdon did not influence her “at all” and she did not observe any inappropriate behavior by Langdon. Further, she testified no juror pressured any other juror. She testified she did not hear Langdon make any comments about plaintiff’s ex-wife or the ex-wife’s mother. She testified the jury asked for transcripts, which were provided, and the questions asked were “taken care of.” Juror Natalie Rosemurgy testified Langdon knew plaintiff’s ex-wife and he “kind of alluded to” her being “a gold digger.” She testified this did not influence her verdict. Regarding plaintiff’s ex-mother-in-law, Rosemurgy testified while “he mentioned her mother, [she could not] recall him saying she was a piece of work.” She testified on re-direct, “I think you’re making too big a deal of it, because it wasn’t a big deal. It was just a comment. It wasn’t a big deal. Nobody took that into consideration when we deliberated.” Rosemurgy did not recall Langdon saying the jury could not get transcripts. In fact, she testified the jury received the transcripts they requested. Rosemurgy affirmed the jury verdict was unanimous and “nobody ever tried to influence somebody.”

Juror Dennis Kekke testified he did not recall Langdon saying anything about plaintiff’s ex-wife or her mother. In any event, he maintained that any derogatory comments about plaintiff’s ex-wife would not have influenced his verdict. He indicated a letter to the court characterized him as being undecided, but stated he “was never undecided” and was not asked about his vote. He was not confused by the verdict form, he did not recall any requests for transcripts, and did not see any jurors pressuring other jurors. Further, he did not observe Langdon display any prejudice toward plaintiff. He affirmed the verdict was unanimous and based on the evidence. Juror Jean Sikkila testified she was not aware of any intimidation or pressuring from other jurors. She thought Langdon acted appropriately and “did well.” She

opined Langdon did not harbor bias against plaintiff. She did not hear any derogatory comments, but acknowledged it was possible she did not hear them. She denied any comments had been made outside deliberations. However, she testified if any such comments had been made, they “would be hearsay” that would not have influenced her decision. She affirmed the verdict was unanimous and she continued to stand by it.

The court indicated it did not “make a decision as to whether [Langdon] made the comments or didn’t make the comments,” but rather accepted “that he made that comment.” The court found that juror Augustine “did feel somewhat intimidated by Mr. Langdon, but that’s not a basis for setting aside a jury verdict.” Plaintiff’s motion for a new trial was denied.

A trial court’s decision to deny a motion for a new trial is reviewed for an abuse of discretion. *Kelly v Builders Square*, 465 Mich 29, 34; 632 NW2d 912 (2001). The trial court does not abuse its discretion when it chooses an outcome within the range of reasonable and principled outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006). Findings of fact are not set aside unless they are clearly erroneous. *Poirier v Grand Blanc Twp*, 192 Mich App 539, 548; 481 NW2d 762 (1992). “A finding of fact is clearly erroneous if, after reviewing the entire record, this Court is left with a definite and firm conviction that a mistake has been made.” *Id.*

It is well established that “once a jury has been polled and discharged, its members may not challenge mistakes or misconduct inherent in the verdict.” *Hoffman v Spartan Stores, Inc*, 197 Mich App 289, 291; 494 NW2d 811 (1992) (quoting *Hoffman v Monroe Public Schools*, 96 Mich App 256, 261; 292 NW2d 542 (1980)). However, if a jury considers or is influenced by “extraneous or outside errors (such as undue influence by outside parties),” the verdict may be attacked. *Id.* *People v Budzyn*, 456 Mich 77, 88-89; 566 NW2d 229 (1997) explained the analysis to be followed when considering whether a jury was exposed to extraneous pressure:

First, the defendant must prove that the jury was exposed to extraneous influences. Second, the defendant must establish that these extraneous influences created a real and substantial possibility that they could have affected the jury’s verdict. Generally, in proving this second point, the defendant will demonstrate that the extraneous influence is substantially related to a material aspect of the case and that there is a direct connection between the extrinsic material and the adverse verdict . . .

Whether or not a remark is made inside the jury room does not determine whether a mistake is inherent in the verdict or influenced by extraneous factors. *Id.* at 91. “In examining these affidavits, a trial court should limit its factual inquiry to determining the extent to which the jurors saw or discussed the extrinsic evidence.” *Id.*

Here, Langdon allegedly made comments about plaintiff’s ex-wife and her mother. The proof on whether any of the alleged comments were actually made was not overwhelming. Jurors Roose, Kekke, and Sikkila testified they did not hear Langdon make comments. Still, it does appear some reference was made. The court declined to make a factual determination on the matter, but it nonetheless indicated it accepted as true that Langdon made the alleged comments. Juror Rosemurgy testified while Langdon mentioned plaintiff’s ex-wife and her

mother, none of the jurors considered those comments during deliberations. Juror Augustine testified she did not learn other jurors' thoughts regarding Langdon until after the trial, indicating any comments he made were not discussed. Therefore, even if Langdon made remarks about plaintiff's ex-wife and her mother, only one juror testified to hearing them, and the jury did not discuss this "extrinsic evidence."

Assuming the existence of the comments, plaintiff has not shown they "created a real and substantial possibility that they could have affected the jury's verdict." *Id.* at 89. Several jurors testified they observed no improper influence on Langdon's part. Those jurors who did not hear the alleged comment consistently testified such a comment would not have influenced their decision. Juror Rosemurgy, who believed Langdon may have alluded to the ex-wife as a "gold digger," stated the comment was not a big deal and did not influence her decision. Even juror Augustine testified she was not influenced by any comments about plaintiff's ex-wife and her mother. In short, the testimony and sworn affidavits before the court establish the alleged commentary was viewed as not material to the proceeding and did not have any impact on the jury's verdict. Therefore, the jury's verdict was not influenced by "extraneous or outside errors" and cannot be attacked.

Plaintiff also alleges a new trial is required because the verdict was logically inconsistent. He argued in his motion below that where the jury found a legally enforceable contract existed, it was inconsistent for them to then find the contract was not breached when the full amount plaintiff sought was not loaned to him. An inconsistent and contradictory verdict will be set aside and a new trial granted. *Payton v Detroit*, 211 Mich App 375, 397; 536 NW2d 233 (1995). A verdict is not inconsistent if an interpretation of the evidence provides a logical explanation and "every attempt must be made to harmonize a jury's verdicts." *Lagalo v Allied Corp*, 457 Mich 278, 282; 577 NW2d 462 (1998) (quoting *Granger v Fruehauf Corp*, 429 Mich 1, 9; 412 NW2d 199 (1987)). It is only when "verdicts are so logically and legally inconsistent that they cannot be reconciled will they be set aside." *Id.*

Plaintiff's argument is without merit. The first question of the special verdict form simply asked if a contract for financing existed. The jury answered yes. The second question asked if the defendant Bank breached its duty under that contract, which the jury answered no. Plaintiff asserts these finding are inconsistent in that the full amount he sought was not loaned to him. Simply because a jury found a contract does not mean, under its plain terms, the contract was breached.

Affirmed.

/s/ Jane M. Beckering  
/s/ Amy Ronayne Krause  
/s/ Mark T. Boonstra